D.P.U. 92-88-A

Petition of Western Massachusetts Electric Company for preapproval by the Department of Public Utilities of its 1994 and 1995 Demand Side Management Programs.

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ORDER ON JOINT MOTION FOR APPROVAL OF OFFER OF SETTLEMENT

I. INTRODUCTION

On November 4, 1993, Western Massachusetts Electric Company ("WMECo" or "Company"), along with the Attorney General of the Commonwealth ("Attorney General"), the Commonwealth of Massachusetts Division of Energy Resources ("DOER"), the Conservation Law Foundation, Inc. ("CLF"), and the Massachusetts Public Interest Research Group ("MassPIRG"), submitted to the Department of Public Utilities ("Department") an Offer of Settlement ("Settlement") and a Joint Motion for Approval of Offer of Settlement ("Joint Motion"). The Settlement is intended to resolve all issues surrounding the Company's required filing for approval of Demand Side Management ("DSM") programs for the years 1994 and 1995.

The Settlement states that it shall remain in effect for the years 1994 and 1995 and that it shall not be superseded or changed as a result of any Department decision in WMECo's Integrated Resource Management ("IRM") filing under 220 C.M.R. §§ 10.00 et seq.[1] The deadline date for the issuance of a Department decision on the

[1] On January 3, 1994, WMECo submitted its draft initial filing to the Department in the Company's second IRM proceeding. This proceeding has been docketed as D.P.U. 94-12.

Settlement is January 21, 1994.[2] This Order addresses the Settlement's proposed modifications to WMECo's residential program designs and commercial program designs.

II. PROCEDURAL HISTORY

On October 16, 1992, the Department issued an Order accepting an offer of settlement in WMECo's first IRM case, D.P.U. 92-88 ("IRM Settlement").[3] According to the terms of the IRM Settlement, WMECo agreed to submit to the Department, between July 1, 1993 and October 1, 1993, a conservation filing which would seek approval of conservation and load management programs for 1994, 1995 and a portion of 1996.[4,5] On November 4, 1993, WMECo submitted to the

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2 The Joint Motion filed on November 4, 1993, contained a deadline of December 23, 1993, for the issuance of a Department decision relative to the Settlement. On December 9, 1993, the Department requested that the deadline be extended to January 17, 1994. Thereafter the Department requested that the deadline date be extended to January 21, 1994. In a letter dated January 18, 1994, the signatories to the Settlement indicated that the deadline had in fact been extended to January 21, 1994.

3 The IRM Settlement was uncontested; it was signed by WMECo, the Attorney General, DOER, CLF, MassPIRG, CES/Way International Inc., the Coalition of Non-Utility Generators, and Destec Energy. Two intervenors, Boston Edison Company and Cambridge Electric Light Company did not sign, but did not object to the IRM Settlement (IRM Settlement at 1).

4 On October 4, 1993, the Department granted WMECo's request to delay its conservation filing until October 18, 1993. The Department subsequently granted a second request by WMECo to delay its conservation filing until November 3, 1993.

Department the Settlement which requested approval of modifications to existing DSM programs. The Department determined that WMECo's conservation Settlement was a continuation of WMECo's first IRM case and docketed the review of the Settlement as D.P.U. 92-88-A. Therefore, all intervenors from D.P.U. 92-88 were deemed to be intervenors in D.P.U. 92-88-A, and the Hearing Officer directed WMECo to use the service list from D.P.U. 92-88 in the present proceeding. The Hearing Officer sent a copy of the service list to all intervenors in D.P.U. 92-88-A.

On December 6, 1993 and January 4, 1994, the Department issued information requests to WMECo for the purpose of assisting the Department in making a decision relative to the Settlement.

On January 17, 1994, CES/Way International Inc. ("CES/Way") submitted comments to the Department relative to the Settlement. On January 20, 1994, WMECo submitted comments in response to those filed by CES/Way.

III. THE PROPOSED SETTLEMENT

A. Introduction

The Settlement addresses DSM programs in each customer sector. In most instances, the Settlement does not introduce significant

[5](...continued)

[5] The Settlement states that the conservation preapproval for 1996 would be addressed in the Company's January 3, 1994 IRM filing (Information Response DPU-1-2).

modifications to the designs of the Company's existing programs as were approved in Western Massachusetts Electric Company, D.P.U. 92-13 (1992). The Settlement does not propose any new conservation programs (Settlement at I-9, I-10). The Settlement proposes DSM expenditures of $14,200,000 for the calendar year 1994 and $15,800,000 for the calendar year 1995 (id. at I-9, I-10, I-2). The level of conservation spending provided for in the Settlement decreases in both 1994 and 1995 from the present level (id. at I-10).[6] The Settlement proposes an incentive mechanism which is based on the Company's performance in achieving (1) energy savings relative to the energy savings levels achieved in 1993, (2) a targeted level of energy savings in programs that address lost-opportunity markets,[7] and (3) a targeted level of energy savings in the residential sector (id. at 3-6). Depending on the Company's success in achieving targets in these areas, its

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6 The level of conservation spending decreases by $2.8 million in 1994 and $1.2 million in 1995 from the approved 1993 program budget of $17,001,000 million. See Western Massachusetts Electric Company, D.P.U. 92-13 (1992).

7 Lost-opportunity markets are those (such as new construction or equipment replacement markets) where the cost-effectiveness of potential efficiency improvements is time-dependent. In markets such as these, if the energy efficiency opportunity is not obtained at a specific time (such as during the construction of a building or when failed equipment is being replaced), the efficiency improvement may become cost-ineffective and the opportunity to implement those improvements in a cost-effective manner may be lost.

incentive payment would range from 3.15 percent to 7.15 percent of expenditures (id.). The Settlement introduces some modifications to existing programs as set forth below.

B. Residential Program Design

The Settlement proposes a number of important changes to the designs of the Company's residential programs, including (1) a shift in focus in the Single Family Electric Heat Program to target low/moderate use electric heat customers (as opposed to the high-use customers previously targeted), because most high use customers have been targeted for service and the low/moderate use market segment has not been fully explored (id. at II-1), and (2) an expansion of the Multifamily Electric Heat Program to include condominiums, which were previously served under the Single Family Electric Heat program (id. at II-7).[8] The Settlement also proposes to eliminate the Public Housing Program and the Domestic Hot Water Program because, according to the Company, the market for each has been largely saturated with conservation

[8] The Settlement states that the condominium market is different from the traditional single family market for two reasons: (1) individual condominium owners typically have to receive approval from the condominium association prior to implementing DSM measures (e.g., insulation); and (2) cost savings could be achieved by providing DSM measures to all condominium units in a complex at the same time (Settlement at II-7).

services (id. at II-1).[9] The Settlement also proposes to discontinue the Appliance Pick-Up Program after 1994, and subsequently transfer the responsibility for the pick-up and proper disposal of appliances to appliance dealers, municipalities and other institutions involved in resource recovery within the Commonwealth (id. at II-2).[10] The Settlement states that WMECo is working with state and federal agencies to educate municipalities on regulations governing the proper disposal of appliances containing chloroflourocarbons ("CFCs") (id.).[11]

Relative to the WMECo's residential lighting programs, the Settlement reflects that the Company intends to (1) alter its direct installation program by replacing its current compact fluorescent product with bulbs that have higher power factors and reduced harmonic distortion, (2) continue the mail order catalog service, but

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9 WMECo indicated that it has achieved a saturation rate of 81 percent for DSM measures in electrically heated public housing units (Information Response DPU-2-1). Relative to WMECo's Domestic Hot Water program, the Company indicated that it has achieved a saturation rate of 85 percent (Settlement at II-1).

10 The Settlement states that WMECo must keep the Appliance Pick-Up Program active for 1994 at somewhat reduced levels to ensure the smooth transfer of the program and to meet contractual obligations with the contractor for proper disposal of refrigerators and freezers (id. at II-2).

11 The Settlement states that new regulations governing the release of CFCs to the atmosphere require municipalities to utilize a system similar to the one presently in place with WMECo's Appliance Pick-Up program (Settlement at II-12).

shift the emphasis from compact fluorescent bulbs to fixtures, and (3) eliminate the retail portion of its lighting program (Light Fantastic Program), because the combination of high marketing costs, lower displaced wattage due to lumen matching, and the Company's avoided costs have dropped rendering this program no longer cost-effective (id. at II-2, II-21, II-22). The Settlement also states that in 1994 the Company will begin to market the highly efficient, CFC-free refrigerators developed through the Super Efficient Refrigerator Program ("SERP").[12] The SERP Program would be supported by a budget of $35,000.00 in 1994, and would increase to $104,000.00 in 1995 (Information Response DPU-1-5 as revised on 1/18/94). The projected societal benefit/ cost ratio calculated across the two year period for this program is 3.31 (id.).

C. Commercial Program Design

The Settlement would implement the following changes with respect to the commercial and industrial sectors. The Company proposes to add a component to its Energy Action Program ("EAP") in

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12 The SERP Program was developed by a group of utilities around the country working with refrigerator manufacturers to produce a prototype highly efficient, chloroflourocarbon-free appliance. Through a competitive process, Whirlpool was selected to manufacture the final models of refrigerators for distribution within the utilities' service territories. Under the SERP program, the Company will pay a $73.67 rebate for each SERP refrigerator sold within its service territory (Information Response DPU-1-5).

1994 that would use a manufacturing productivity consultant to conduct a Productivity Review in Manufacturing Environments ("PRIME") audit, in addition to standard energy audit, to identify potential energy efficiency improvements, reductions in productions costs, reduced costs for emission/hazardous waste abatement, and other possible direct benefits to program participants (Settlement at II-48).[13] The goal of the PRIME audit program would be to improve the competitiveness of WMECo's industrial customers in an effort to retain or increase jobs and reduce pollution in its service territory (id. at II-49).

The Settlement also proposes to postpone further applications of the Farm Share Program (id. at II-25). The Company states that although WMECo plans to reach approximately 38 percent of the eligible market by the end of 1993, the Farm Share Program is a retrofit program whose resource value is not needed at this time (id. at II-25).[14] Further, the Settlement proposes two modifications to the

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13 The EAP is WMECo's major electric energy conservation retrofit program for larger commercial and industrial customers with facilities larger than 50,000 square feet and with at least 250 kW of demand (id. at II-44).

14 WMECo's Farm Share Program reached over 45 farms that received rebates in 1993 (id. at I-4).

Company's Customer Initiated Program ("CIP").[15] First, the Company will offer financing assistance to participants in the CIP program (id. at II-53). Second, the Company will offer incentives to industrial customers to add or replace manufacturing process equipment (id.).

The Settlement proposes to offer financing or leasing arrangements to participants in the Energy Conscious Construction, Energy Action, and Customer Initiated programs in lieu of the rebates that would have otherwise been available to the participants (id. at II-53, II-56, II-57). The Company states that such arrangements could reduce the magnitude of incentive payments required, especially where financing results in positive cash flows to customers (id. at II-56). Further, the Company states that, initially, financing would be obtained through partnering relationships with various institutions, with WMECo "buying down" applicable interest rates to a level between zero and the prevailing market rate (id.). The costs incurred by the Company for the interest subsidies provided under this arrangement would not exceed the value to ratepayers provided by the project (id. at

15 The CIP is a retrofit program that is similar to the EAP, but that (1) focuses only on industrial process measures, (2) need not be comprehensive in scope (as required for EAP recipients), and (3) allows customers to make use of their in-house expertise to specify and install (or arrange for the installation of) energy conservation measures (Settlement at II-50, II-51). WMECo retains a substantial degree of oversight to ensure that measures are cost-effective, installed properly, and actually produce expected savings (id.).

II-56).

The Settlement would also allow for the cost of the financing subsidy, any performance guarantees, and all administrative costs associated with the financing arrangement to be recoverable through the conservation charge (id. at II-57, II-58).

D. Position of CES/Way and Response of WMECo

CES/Way states that generally, WMECo's programs are of high quality (CES/Way Comments at 1). CES/Way contends that with regard to programs in the commercial and industrial sector: (1) WMECo's business practices are anti-competitive; and (2) program cost/benefit analysis incorrectly assume a persistence of savings for seven to ten years (id.). With respect to the issue regarding anti-competitive business practices, CES/Way contends that in WMECo's EAP, contractor/arrangers are not selected pursuant to a competitive bidding process (id. at 4). Further CES/Way contends that WMECo has actively discouraged the independent development in its service territory of DSM projects that would take advantage of ratepayer funded incentives (id.). Relative to persistence of savings, CES/Way contends that savings for commercial and industrial programs will not persist as claimed in the Settlement unless customers are held accountable to maintain savings for a seven to ten year period (id. at 3).

In response to the comments filed by CES/Way, WMECo states that the issues raised by CES/Way are extraneous to this proceeding (WMECo Comments at 1). Further, WMECo states that (1) the Company does not pursue anti-competitive business practices and does make available business opportunities for energy services companies through incentives for their clients in several market-driven conservation programs, and (2) the statements by CES/Way concerning WMECo's utilization and procurement of contractor/arrangers for the EAP significantly misrepresents the actual process (id. at 2).

III. ANALYSIS AND FINDINGS

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the company's filing and other record evidence to ensure that the settlement is consistent with the public interest. Massachusetts Electric Company, D.P.U 92-217-A at 4 (1993); Massachusetts Electric Company, D.P.U. 92-217, at 7 (1993); Boston Edison Company, D.P.U. 91-233, at 5 (1992); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992).

As noted above, the Company is currently implementing DSM programs in accordance with D.P.U. 92-13. Therefore, the Department must determine if the proposed Settlement, which would eliminate four programs,[16] modify some of the current programs, and extend program implementation generally through the end of 1995 is consistent with the public interest.

A. Residential Program Design

The Settlement proposes to shift the focus of the Single Family Electric Heat Program to target low/moderate use electric heat customers and to expand the Multifamily Electric Heat Program to include condominiums. The Company stated that virtually all of its single family customers have been targeted and projects that it will become increasingly more expensive to achieve targeted penetration levels in the Single Family Electric Heat Program unless the marketing focus is shifted to low/moderate electric heat customers. Therefore, the Department finds that these efforts, designed to increase energy savings from the residential sector, are appropriate. Further the Department notes that the condominium market may present unique obstacles to the implementation of DSM measures. Therefore, the Department finds that it is appropriate for this market to be served under the Multifamily Housing program.

Based on the high saturation rates achieved in the Public Housing

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16 The four programs to be eliminated in the residential sector are as follows: (1) Public Housing; (2) Domestic Hot Water; (3) Appliance Pick-Up; and (4) Light Fantastic. The Farm Share Program, a commercial sector program, is not being eliminated but is being postponed.

and the Domestic Hot Water programs, the Department finds that it is appropriate to discontinue these programs. The Settlement also provides for the Company to ramp down its Appliance Pick-Up Program, which conserves energy by encouraging customers to turn in operating, but unneeded, refrigerators or freezers. The Settlement states that this program will be eliminated after 1994 because individual municipal governments are required under new regulations to recycle CFCs, as was done in the Appliance Pick-Up Program, prior to disposal of appliances. For purposes of this Order, the Department accepts the Settlement's proposal to discontinue the Appliance Pick-Up Program after 1994. However, the Department notes that this program is highly cost-effective and that two elements of the program -- encouraging consumers to save energy by turning off unneeded appliances, and facilitating the disposal of those appliances -- remain appropriate endeavors under a DSM program.

The Settlement would discontinue the subsidization of energy efficient lighting through retail outlets (i.e., the Light Fantastic Program), because the Company has found this portion of its residential lighting program not to be cost effective. However, the Company would continue offering energy-efficient lighting through its mail order catalog and would directly install cost-efficient lighting measures through its other residential programs. The Department therefore finds that the Settlement's proposal to eliminate its Light Fantastic program is acceptable.

The Settlement would permit the Company to offer the SERP program to residential customers through rebates to the manufacturer. The Department notes that the SERP program would encourage the production and installation of highly efficient refrigerators, and that documents submitted by the Company indicate that the program would be cost-effective. In previous Orders, the Department has encouraged electric companies to offer rebates for high-efficiency refrigerators. Western Massachusetts Electric Company, D.P.U. 89-260, at 72 (1990). Accordingly, the Department finds it appropriate for the Company to implement the SERP program.

B. Commercial Sector

The Department finds that the continued shift toward market-driven replacement programs offering rebates based on the incremental cost of efficiency improvements is appropriate at this time. In addition, we commend the parties to the Settlement for proposing the financing/leasing program component, which should enable the Company to allocate a greater proportion of program costs directly to participants in the Energy Conscious Construction Program, Energy Action Program, and CIP.

The Department has some reservations regarding the Company's failure to provide sufficient documentation relative to the decision to postpone the Farm Share Program as reflected in the Settlement. The Department finds that this failure is not sufficient grounds for rejection of the Settlement in light of the fact that the Settlement is not suggesting that the program be eliminated. The Department notes that specific information relative to when the Company plans to resume this program should be provided during the course of the Company's current IRM proceeding.

E. Conclusion

The Department concludes that, overall, the proposed Settlement would improve the Company's existing DSM programs. Furthermore, the Department notes that the Settlement represents an agreement among a broad range of interests. Based on our review of the proposed Settlement, including information presented regarding program design and cost-effectiveness, the Department finds the Settlement to be consistent with the public interest. Accordingly, the Department accepts the Settlement.

In accepting the Settlement, the Department has noted the issues raised by CES/Way. The Department emphasizes that WMECo has just started its second IRM proceeding[17] and the Department will be

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[17] The Department notes that according to the notice issued in WMECo's IRM proceeding, the intervention deadline is February 4, 1994.

reviewing the monitoring and evaluation of WMECo's DSM programs in a forthcoming proceeding. These proceedings may be appropriate forums for CES/Way to raise issues it has expressed to the Department in this proceeding.

In accordance with the terms of the Settlement, our acceptance of the Settlement does not constitute a determination by the Department as to the merits of any issue in any subsequent proceeding. Further, we emphasize that our acceptance of this Settlement should not be interpreted as establishing precedent and our acceptance does not constitute a determination or finding on the merits of any aspect of the Settlement.

In a recent Order, the Department stated that "we question whether it is necessary or even appropriate for the Department to review and preapprove modifications (e.g., program designs and budget levels) to existing DSM programs that have been preapproved by the Department. In the future, we intend to consider whether ... any electric company should be given back the responsibility of prudently managing its DSM programs subject to later review by the Department." Massachusetts Electric Company, D.P.U. 92-217-A at 6-7 (1993) ("MECo"). The Department emphasizes that such statements do not represent a policy shift away from Department preapproval of basic DSM strategy and planning, nor did MECo represent any immediate change in our view of the regulatory framework as it now applies to DSM programs. Rather, in MECo and in the instant case, the Department is providing notice that in a future proceeding,[18] the Department will evaluate whether, within the narrow context of DSM programs that have already been preapproved by the Department, electric companies should be assigned a greater responsibility to make adjustments to those programs that would be consistent with an electric company's obligation to provide least-cost service to customers, and which would be subject to later review by the Department.

This Order does not change, or even make a proposal to change any specific Department policy. However, the Department recognizes that the level of competition in traditionally regulated industries may change. There may be a greater need for companies to be able to adapt to new circumstances and to respond to new opportunities on a more timely basis than can be accommodated under current procedure. Finally, the Department is concerned that the procedures it follows in regulating utilities be as efficient as is appropriate to current circumstances, and not be more onerous than is necessary to serve the public interest.

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[18] The Department may notice this issue as part of the next Phase I IRM filing submitted to the Department by an electric company.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Joint Motion for Approval of Offer of Settlement, filed by Western Massachusetts Electric Company, Attorney General, Division of Energy Resources, Conservation Law Foundation, Inc., and Massachusetts Public Interest Research Group, be and hereby is APPROVED.